



# The Town of Swampscott

## BOARD AND COMMITTEE CODE OF CONDUCT



AUGUST 24, 2022

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## **ACKNOWLEDGEMENT**

"Democracy is a means of living together despite our differences. Democratic deliberation is an alternative to physical

violence. It is predicated on the assumption that it's possible to disagree agreeably, that it's better to laugh than cry, that one can vigorously contest the position of one's adversary without questioning his or her personal integrity or motivation, and that parties to a debate are entitled to the presumption that their views are legitimate if not correct."

*--Thomas Mann*

## **CHAPTER 1: General Information**

### **A. Purpose**

This policy covers all actions and communications of elected and appointed officials except for members of the School Committee. The Town strongly encourages its elected and appointed officials to maintain and enforce respectful discourse with their fellow elected and/or appointed members, with those who work for the Town, those who volunteer their time and services on behalf of the Town, and members of the public by striving to treat every person fairly and with respect regardless of any differences of opinion. Towards that end, the purpose of this policy is to establish a centralized standard of conduct for all elected and appointed officials in the Town.

### **B. Applicability and Scope**

This policy and all its sections shall apply to all elected and appointed officials acting on behalf of the Town and covers all of their actions and communications whether spoken or written, including but not limited to public meetings and forums; all electronic communications; social media communication; and any other official interactions.

### **C. Distribution & Education**

The Town Clerk shall provide a copy of this policy to every recently appointed and elected official, whether newly appointed/elected or re-appointed/re-elected.

Prior to engaging in any official business related to the appointed or elected position, each official shall sign a statement that the individual has read this policy and will comply with all requirements set forth herein. New officials shall file one written copy (electronic or hard copy) of the Policy with the Town Clerk's office and keep another copy for themselves. In the event that any member declines to sign the form, that fact shall be noted by the Town Clerk on the form.

The Town Clerk shall keep copies of this Policy on file for immediate distribution to any interested member of the public.

## **CHAPTER 2: Applicable Laws, Policies & Regulations**

### **A. State Laws**

All elected and appointed officials shall comply with all applicable federal and state statutes and regulations, including but not limited to the following, which frequently arise in the context of their duties:

1. Open Meeting Law (M.G.L c.30A)
2. Public Records Law (M.G.L. c. 66, §§ 5A,10,14)
3. Conflict-of-Interest Law (M.G.L. c. 268A)

### **B. Town Policies and Regulations**

All elected and appointed officials shall comply with the Town Charter and all applicable Town policies, which primarily include but are not limited to the following:

1. The Town's Anti-Discrimination and Anti-Harassment Policy
2. The Town Charter
3. The Town's Board and Committee Handbook
4. The within Code of Conduct

## **CHAPTER 3: Conduct Within Official Capacity**

Town elected and appointed officials are expected to act honestly, conscientiously, reasonably and in good faith at all times having regard for their responsibilities, the interests of the Town, and the welfare of its residents.

Town officials shall refrain from communicating or acting in a disrespectful, abusive and/or threatening manner towards members of the community, other elected or appointed officials, the Town Administrator, and Town Staff.

Finally, all elected and appointed officials must fully comply with the Town's Anti-Harassment and Anti-Discrimination Policy.

The following sections provide an overview of the expectations of the conduct of Town officials in various scenarios. This is by no means an exhaustive analysis, but is meant to serve as useful guidance for what is considered acceptable behavior of both appointed and elected officials.

### **A. Conduct in Official Capacity**

Conduct while acting in an official capacity includes verbal and written communications, including emails, letters and any other forms of written communication.

Members should conduct themselves professionally and in a manner so as to maintain public confidence in them, their local government, and in their performance of the public trust.

Unless specifically exempted, conduct the business of the public in a manner that promotes open and transparent government.

Acting as a Town official is a means of unselfish public service that is not intended to benefit the individual personally, professionally or financially. Officials must recognize that the chief function of local government at all times is to serve the best interests of the Town.

Town officials are expected to be well informed concerning the duties of their respective boards or committees.

Members should conduct themselves in such a manner so that it is clear that they cannot be improperly influenced in the performance of their official duties.

Officials should not disclose to others or otherwise use confidential information acquired by them in the course of their official duties to further their personal interests.

Consuming and/or using alcohol, non-prescribed narcotics, or controlled substances is prohibited while acting in an official capacity.

### **B. Conduct in Public Meetings**

Town officials should participate and interact in official meetings with dignity and decorum fitting those who hold a position of public trust. Towards this end, elected and appointed officials should treat the members of the committee on which the official serves with respect despite differences of opinion. Professional respect does not preclude sharing honest differences of opinion but requires respect within those differences. With that said, Town officials should take care to make decisions only after all facts on a question have been presented and adequately discussed.

Town officials must recognize their responsibility to attend all meetings on time and for the duration of the meetings. Officials should also come prepared to meetings, to the extent practicable, by reviewing the agenda items and any materials provided in advance of the meeting so as to maximize their ability to contribute to the committees' respective purposes.

Town officials must recognize that any action at official legal meetings is binding and that no one individual can bind the committee to any decision. Town officials must also recognize that their board or committee cannot take any action outside of a duly posted meeting.

### **C. Social Media Communication**

Town officials should be aware that anything they post on social media reflects on the Town of Swampscott and that records relating to official Town business are considered public records. Town officials may have "official" social media profiles that are not limited to their own personal social media accounts, subject to the following rules and considerations:

- All of the terms of the within Code of Conduct apply to social media communications.
- Town social media posts are public records. Therefore, information posted by Town officials may be subject to the Massachusetts Open Meeting and Public Records Laws and use of social media accounts must conform to all applicable state, federal, and local laws, regulations, and policies, including this Policy and the Municipal Records Retention.
- Social media posts may not be used to circumvent or violate Massachusetts Open Meeting Laws.
- No Town official shall make any post representing the Town in an official capacity without prior authorization from the Town Administrator or the Town official's board or committee.

- Any externally linked content must be explained clearly.
- Care must be taken to avoid "endorsing" a product, service, or political cause on social media.



## **CHAPTER 4: Conduct Outside Official Capacity**

Town officials should conduct their personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

## **CHAPTER 5: Conduct with Town Officials, Staff & Residents**

### **A. Conduct in Relation to other Town Officials**

Town officials should treat the members of all other boards and committees with respect despite potentially conflicting roles and differences of opinion. Professional respect does not preclude sharing honest differences of opinion but requires respect within those differences.

Town officials are encouraged to not publicly criticize another Town official. Concerns about the conduct of another official should be privately directed to the chair of that committee or Select Board chair, or, where appropriate, to the Town Administrator.

### **B. Conduct in Relation to the Town Administrator**

Pursuant to the Town Charter, the Town Administrator is the chief administrative and financial officer of the Town and is directly responsible to the Select Board for the administration of all Town affairs not specifically reserved to another elected body. The Town Charter sets forth the powers and duties of the Town Administrator. Town officials shall not interfere in the Town Administrator's discharge of the duties of that position.

Town officials must recognize and support the administrative chain of command by:

- Refraining from giving orders or directions to the Town Administrator as an individual board/committee member.

Refraining from providing information that concern public policy matters or issues that will be considered by the Board that the Board member would not be willing to share with other Board or committee members.

- Directing any complaints or other concerns brought to the attention of the official to the Town Administrator and/or the committee or board chair. Individual Town officials have no authority to take action on their own.

### **C. Conduct in Relation to Town Staff**

Town officials must treat all staff as professionals and respect the abilities, experience, and dignity of each individual.

Town officials must understand that Town staff do not take direction from any individual official on any matter. Therefore, officials should refrain from giving instructions to or requesting assistance from Town staff. All such requests should only go through the chair of the official's committee to Town Administrator or (the chair of) the official's appointing authority.

Town officials are encouraged to not publicly or directly criticize a member of Town staff or a Town department as a whole. Concerns about staff performance should be communicated to the Town Administrator or Select Board chair through private communication.

#### **D. Conduct in Relation to the Community**

Town officials must demonstrate respect for residents that they serve. Towards this end, Town officials should:

- Be well informed concerning the duties of the Town official's board or committee.
- Encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
- Town officials should never purport to represent the opinion of their respective boards or committees except when specifically authorized by a recorded vote to do so.
- Safeguard confidential information.
- Officials must refrain from making statements or promises as to how they will vote on quasi-judicial matters that will come before the committee until they have had an opportunity to hear the evidence presented during a public hearing.
- Never give preferential treatment to any citizen based on personal preference.
- Officials must never use their position to harass or intimidate any person or entity.

## **CHAPTER 6: Enforcement**

### **A. Generally**

A violation of any aspect of this policy can damage the integrity and harm the reputation of the Town, Town Staff and Town officials. The Town is fully committed to reviewing and/or investigating, as necessary, any and all reported incidents. The purpose of these rules is to provide a reasonable process for investigating and determining whether a member has violated the code, and to afford each individual member who is the subject of an investigation, the respondent, a full and fair opportunity to be heard throughout the process.

### **B. Reporting**

Town officials may have separate reporting requirements under the Massachusetts Ethics Law depending upon the board or committee on which they serve. The Town Administrator and the chairs of all boards and committees must be aware of the relevant reporting and disclosure requirements.

Generally speaking, Town officials who are victim to or become aware of inappropriate conduct should report said allegations to the Town Administrator and, as applicable, the appointing authority. The Town Administrator's Office shall document the incident forthwith.

### **C. Investigations**

Immediately after receiving a complaint, the Town Administrator and appointing authority shall determine the next course of action.

Credible allegations of discrimination or harassment by an elected or appointed official **shall** be investigated. Allegations of a violation of any other provision of this Code of Conduct **may** be investigated in accordance with the procedures outlined herein.

If a complaint is made against a person who was a member at the time the alleged violation occurred, but who is not a member at the time the complaint is made, the complaint will be processed under these procedures only if the former member agrees in writing. Outstanding or unresolved complaints against an individual for conduct that occurred while formerly a member of a Town board or committee may disqualify that individual from appointment to any Town boards or committees in the future.

If a Town official resigns from the official role before the conclusion of an investigation, the investigation may nevertheless continue to a conclusion.

If a governmental agency or body is conducting an investigation of any alleged wrongful behavior of a Town official, the Town Administrator and appointing authority may defer any investigation until the agency investigation is complete.

No investigation shall be required if (a) the respondent admits to the violation in an initial response, or (b) the respondent has already entered a guilty plea or has been found guilty and has exhausted all appeals, in a criminal case involving the same conduct.

#### **D. Investigatory Process**

When a matter is determined to require investigation, the Town Administrator shall provide the Town official with written and detailed notice of the alleged violation and anticipated procedures relative thereto.

The Town Administrator has the discretion to (a) personally investigate the complaint and issue a report in compliance with the procedures outlined here; (b) assign the investigation to the Human Resources Director for investigation and reporting in compliance with the procedures outlined herein; or (c) refer the matter to a disinterested outside firm or other individual qualified to investigate the alleged conduct.

The individual or firm to whom the complaint is assigned shall promptly investigate the matter and draft a report with findings of fact and recommendations supported by reliable and relevant evidence. The respondent shall be given fifteen (15) days within which to respond in writing to the complaint or information, to provide any further information or material the respondent considers relevant to the allegations, and to meet with and/or answer any specific questions asked by the investigator. The Town official may appear at such a meeting personally and may be accompanied by a representative.

The investigation and reporting process shall be completed no more than sixty (60) days after the date of notice to the responding Town official. When the matter is being investigated by the Human Resources Director or a disinterested outside firm, a reasonable extension to the above specified timeframes may be granted by the Town Administrator. If the Town Administrator fails to complete the investigation and reporting process within 60 days, the Town Administrator must refer the matter to the Human Resources Director or a disinterested outside firm.

#### **E. Discipline**

Once completed, the investigator shall produce the final report to the appointing authority and, as applicable, the Town Administrator. The report shall be reviewed by the appointing authority and, as applicable, the Town Administrator in executive session and shall remain confidential. .

If the written report supports a violation of this policy, the Town Administrator and, as applicable, appointing authority, shall discuss possible disciplinary action in accordance with the terms outlined herein.

Disciplinary situations shall be reviewed on a case by case basis. Disciplinary action need not be progressive and may take any form authorized by law and recommended by the Town Administrator, which may include the following:

- No official disciplinary action is issued;

- Request that the Town official issue a personal apology to the complainant;
- Request that the Town official issue a public apology;
- Censuring of the Town official through public or written notice that the official has violated the Code of Conduct, which may include the nature of the violation, and that, if the conduct is repeated in the future, it may be cause for a further sanctions; or
- The appointing authority may decline to reappoint an individual who violates any provision of this Code of Conduct.
- Removal, consistent with and to the extent allowed by any applicable law, charter provision or bylaw.

The Town Administrator's recommendations must be approved by a majority vote of the applicable board or committee except that no current or former member may be censured without the unanimous approval of the same.

When applicable, the Town Administrator's recommended and/or the committee's approved disciplinary action may be less restrictive, than the recommendations made in the Human Resource Director's or independent investigator's report. The Town Administrator and, as applicable, the appointing authority should always consult with Town Counsel when making determinations about disciplinary action.

Once a determination is made, the Town Administrator's Office shall immediately send, by registered mail, a copy of the written decision to the Town official.



## **ACKNOWLEDGEMENT**

Your signature below acknowledges that you have read the within Code of Conduct and agreed to the terms outlined here.

**NAME:** \_\_\_\_\_

**BOARD/COMMITTEE:** \_\_\_\_\_

**TERM OF OFFICE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_